

**A SUMMARY OF THE
NEW YORK STATE STATUTES
RELATING TO MARRIAGE**

**AND ALSO OF THE
CANON ON HOLY MATRIMONY
OF THE
PROTESTANT EPISCOPAL CHURCH**



FOR THE USE OF THE CLERGY



**The Social Service Commission
Diocese of New York
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INTRODUCTION

WHEN a clergyman officiates at a marriage he acts in a two-fold capacity. He is a minister of the Church, solemnizing and blessing a spiritual union. He is also a civil official, witnessing and sealing a civil contract. The canon on marriage of the Protestant Episcopal Church declares that "Ministers of this Church shall conform to the laws of the State governing the civil contract of marriage, and also to the laws of this Church governing the solemnization of Holy Matrimony."

For these reasons the following summary of the New York State statutes relating to marriage has been prepared by our Legislative Committee for the use of the clergy. With it is printed a summary of the canon on the Solemnization of Holy Matrimony of the general canons of the Protestant Episcopal Church.

In summarizing the State law no attempt has been made to include sections dealing with the marriage relationship after the ceremony, nor with those governing the termination of marriage except as they affect remarriage. That would be a voluminous task, and of little practical use to clergymen. In other words this summary deals primarily with statutory provisions concerning the actual making of the marriage contract as far as they are of interest and importance to officiating ministers.

This summary is in no sense a transcript of the law. It is an attempt to state in lay language and in a form convenient for the clergy important legal provisions concerning the civil contract of marriage. But for any question involving a full interpretation of any section of the law, or one not covered by the statutes, the advice of a competent attorney should be secured.

SOCIAL SERVICE COMMISSION
DIOCESE OF NEW YORK

SUMMARY OF NEW YORK STATE STATUTES RELATING TO MARRIAGE

I. THE MARRIAGE LICENSE

(1) *A license is required*; and must be in the hands of the officiant prior to the ceremony and within one year from the date of the issuance of the license.

(2) *The license must be procured* from the town or city clerk of the town or city, and in the City of New York from the city clerk or the deputy city clerk of the borough of said city in which the woman to be married resides. If she is not a resident of the State or if both parties to the marriage are non-residents of the State the license must be obtained from the clerk of the town or city in which the marriage is to be performed.

(3) *The regular fee is two dollars.*

(4) *Both applicants must appear* in person, before the clerk, or his deputy, and sign and verify a statement containing the following information:—Name, color, residence, age, occupation, and place of birth; names of parents including mother's maiden name, and country of birth of each; the number of the marriage, and if previously married whether former mate is living, and if divorced, when, where, and against whom the divorce was granted; and finally a sworn declaration that there is no legal impediment to marriage.

(5) *No advance notice* for the license is required. In some states as much as five days

must elapse after the notice before the license is issued.*

(6) *The minimum possible age* for a boy is sixteen years, and for a girl, fourteen. A false statement of age is criminally punishable. The clerk is instructed to secure documentary proof of age when he is in any doubt.

(7) *Consent for Minors.* A boy under 21 years and over 16, and a girl under 18 and over 14, must furnish the written consent of both parents; or of one parent if the other be dead or missing over a year with whereabouts unknown, or divorced with custody awarded to consenting parent. If both be dead, then written consent must be obtained from the guardian. If there be no parent or guardian, then from the person in whose custody the minor may be. The consenting parties must appear personally and acknowledge or execute their consents before the clerk or some other officer authorized to administer oaths and take acknowledgments provided that where such affidavit or acknowledgment is made before an official other than the town or city clerk, the consent with a certificate attached showing the authority of the officer to take acknowledgments must be duly filed with the town or city clerk. Girls under the age of sixteen must also procure the consent of the court. Marriage to a girl under 18 years without the proper legal consent makes the

*A bill is to be introduced in the 1937 session of the New York Legislature prohibiting the solemnization of any marriage within seventy-two hours from the date and hour of issuance of the license therefor, unless authorized by a Court of record.

man punishable by heavy fine and imprisonment.

(8) *A person may not marry* his or her parent, child, grand-parent, grand-child, brother, sister, half-brother, half-sister, aunt or uncle, nephew or niece. There is no prohibition against the marriage of first cousins; nor of any relationship by affinity (i.e., related but not of the same blood).

(9) *Racial Differences.* There is no prohibition because of racial differences.

(10) *Mental and Physical Qualifications.* The clerk shall require each party to sign and verify a statement as to freedom from venereal disease. There is no statutory provision as to other diseases nor mental incompetency. Certain court decisions have declared that idiots and lunatics are incapable of contracting marriage, and that such marriages are *ipso facto* void.

(11) *The form of license* contains the names and residences of the couple, a full abstract of all facts disclosed in the application, an authorization for the solemnization of marriage by a qualified officiant, and a certificate for the officiant to fill out, sign and return, together with license, to the issuing clerk. (Incidentally, it is quite unnecessary for the couple to purchase the personal marriage certificate which some clerks try to sell. Such a certificate will only duplicate the Church certificate which the clergyman should give to the couple.)

II. SOLEMNIZATION

(1) *The officiant may be:* (a) A clergyman or minister of any religious body; and

in Manhattan and Brooklyn the leaders of the Society for Ethical Culture; (b) A mayor, recorder, city magistrate, police justice or police magistrate of a city. (Except that in cities between 100,000 and 1,000,000 population, no city official may officiate other than the mayor or the police justice). In cities of over a million the city clerk or any of his deputies may serve. (c) A justice, or a judge of a Court of record, or of a municipal court, a police justice of a village; and a justice of the peace except in cities between 150,000 and 1,000,000 inhabitants. But the marriage of a person under 21 years of age, may be solemnized only by officiants in class "a", or by a mayor, a justice or judge of a court of record, or a judge of a children's court, or a justice of the Court of Special Sessions in New York City.

(2) *Non-resident Clergymen.* The solemnization of marriages is not limited to clergymen resident in the State, and a minister residing in another state is authorized to officiate in the State of New York, except that in the City of New York he is required by the Sanitary Code, before performing the marriage ceremony in that city, to register his name and address in the office of the Bureau of Records of the Department of Health.

(3) *Officiant's Credentials.* No credentials are required except in New York City. In that city the Sanitary Code provides: "Every person authorized by law to perform the marriage ceremony shall, before performing any such ceremony in the City of New York, register his or her name and address, and

every change of address, in the office of the Bureau of Records" of the City Department of Health.

(4) *Possession of Marriage License.* Officiants who solemnize a marriage without having received from the couple a proper marriage license are punishable by fine or imprisonment.

(5) *The Form of Ceremony* must include a solemn declaration by the parties in the presence of the officiant and at least one other witness (the Church requires two) that they take each other as husband and wife. Marriages among Quakers, or similar denominations having officially their own particular ceremony regularly practiced in their society, are valid. Also Indian marriages according to their tribal customs. The laws and court decisions concerning marriage by contract are much too complicated to be stated briefly. The so-called Common Law marriage (simple agreement by both parties in words of the present tense to become husband and wife, followed by cohabitation) has been prohibited by statute in New York since April 29, 1933.

(6) *Place of Ceremony.* Where the parties to be married are both residents of the State the marriage may be solemnized in any place in the State. Where the woman or both parties to be married are non-residents of the State the marriage must be solemnized in the town or city where the license is issued.

(7) *The Officiant's Responsibility.* An officiant who knowingly solemnizes an incestuous marriage, or one in which he knows that

either party is legally incompetent, idiot, or insane, or under age without proper legal consent, or when he knows of any legal impediment, may be punished by fine or imprisonment. The State law however does not require him to make an investigation if he has no personal knowledge of incompetency. Legally he is protected by the Marriage license. (But the Church's Canon, as well as common decency, compels him to take nothing for granted, not even the license. "Marriage and the State", by Richmond and Hall, opens one's eyes to the irresponsibility and laxity of some license clerks and bureaus).

III. MARRIAGE RECORDS

(1) *The Civil Certificate.* The officiant must return to the issuing official the signed and completed certificate and the license to which it is attached, not later than the fifth day after the ceremony. In New York City officiants must also keep a registry of marriages solemnized by them upon blanks supplied by the City Department of Health, and must within ten days after the marriage send a written and signed copy of such registry to that Department. The registry must show the date and place of marriage and substantially all the information listed in paragraph I (4) of this memorandum.

(2) *Public Records.* When the town or city clerk shall have received from the officiant the certificate of marriage with the license attached, he shall record and index it as a part of the public records. On or before

the fifth day of each month the town or city clerk, excepting the city clerk of the City of New York, shall file the original documents received by him during the preceding month in the office of the State Department of Health. The issuance of marriage licenses and the registration and recording of marriages are under the supervision of the State Commissioner of Health, who may issue rules for insuring complete registration, and shall report to the District Attorney cases of violation.

IV. MISCELLANEOUS

(1) *Proper consent of parties.* The law regards marriage as a civil contract "valid if at the time of making the parties were *willing* to contract, were *able* to contract and actually *did* contract in the forms prescribed by law. Marriage is based on the *consent* of *competent* parties." Lack of any one of the many essentials comprising consent and competency may render the marriage subject to annulment by a competent court upon proper application.

(2) *Marriage is legally terminated by death, annulment, dissolution or divorce.* In general, annulment is granted for causes existing at the time of the ceremony and divorce for causes arising after the ceremony. The chief exceptions are that a marriage may, under certain conditions set forth in the statute, be annulled if one of the parties thereto has been incurably insane for a period of five years or more, and that a marriage may be dissolved on petition of one of the parties

thereto if the other party has absented himself or herself for five successive years without knowledge on the part of the petitioner that the absent party has been living during that time.

(3) *After a final decree of absolute divorce* the innocent party may legally remarry immediately. Where a divorce has been granted for adultery the guilty party may not legally marry during the lifetime of the innocent party without the consent of the court which granted the divorce and then only after three years have elapsed since the final decree and upon satisfactory proof that the conduct of the guilty party has been uniformly good. The prohibition against the remarriage of the guilty party, however, has been held by the weight of authority not to be effective outside of the State of New York. Consequently a valid marriage contracted in another state by the guilty party cannot be declared void in New York because of the disobedience of the prohibition of the divorce decree. It should be pointed out, however, that a guilty party divorced for adultery in another state is prohibited from marrying in this State during the lifetime of the innocent party unless three years have elapsed since the divorce in the other state and then only if there is no other legal impediment. (See also the provisions of Canon 41, Subdivision V.)

(4) *Annulment.* The laws concerning annulment are extremely complicated. The principal legal grounds are incest, bigamy (both of which make a marriage void), lack of age, mental inability to understand the

contract, impotency, force, duress, fraud, and subsequent incurable insanity for a period of five years, (which make the marriage voidable). But see the provisions of Canon 41, Subdivision VI.

(5) *Limited divorce* (legal separation) or divorce "from bed and board" leaves neither party free to marry again. A separation is usually granted for cruelty or abandonment by either party or neglect to provide by the husband.

SUMMARY OF GENERAL CANON 41 of the Protestant Episcopal Church

"The Solemnization of Holy Matrimony".

(Numbers in brackets refer to sections of the Canon)

I. *Three day notice of intention to marry required.* Exception only for "weighty cause" and then only when at least one of the parties is a member of officiating Minister's congregation or is well known to him. Such exception must be immediately reported in writing to the Ecclesiastical Authority of the Diocese. (III-4)

II. *Conformity.* Ministers must conform to the laws of the State and to the laws of this Church. (II)

III. *Responsibility.* Ministers "shall ascertain by due inquiry" whether or not the parties have the right to marry according to the laws of this Church. (III-1-a)

IV. *Never compelled to officiate.* "It shall be within the discretion of any Minister to decline to solemnize any marriage". (V)

V. *The Marriage of a divorced person not permitted* so long as the former husband or wife is still living, except in the case of the innocent party in a divorce for adultery and only under the following conditions: (a) the lapse of at least one year after the divorce; (b) "satisfactory evidence touching the facts in the case, including a copy of the Court's decree, and record, if practicable, with proof that the defendant was personally served or appeared in the action, be laid before the Ecclesiastical Authority" of the Diocese; and (c) a declaration in writing by the Ecclesiastical Authority, after taking legal advice, that the case of the applicant conforms to the requirements of this Canon. (V)

VI. *Annulled or Dissolved Marriages.* A person whose former marriage has been annulled or dissolved by a civil court may formally apply to the Bishop or to an Ecclesiastical Court to have said marriage declared null and void by the Church under certain circumstances enumerated in the Canon. If the former marriage is pronounced null by the Bishop, after proceedings described in the Canon, such a person may be married as if he had never previously been married. (VI)

VII. *Instruction on marriage required.* Ministers "shall instruct the contracting parties as to the nature of Holy Matrimony, its responsibilities, and the means of grace which God has provided through His Church".

(III-1-b.) Ministers must also give general instruction to their congregations. (I)

VIII. *Two witnesses required* for the ceremony. (III-2)

IX. *Records.* In addition to those required by the State, Ministers must "without delay formally record in the proper register the name, age and residence of each party." This record must be signed by the officiating Minister, by the married parties and by at least two witnesses of the marriage. (III-3)

X. *Family Welfare.* When the security or permanence of a home is imperiled by domestic troubles it is the duty of the Minister "to labor that the parties may be reconciled." (IV)

XI. *Discipline.* If a Minister believes that persons desiring Baptism, Confirmation or the Holy Communion have been married "otherwise than as the word of God and discipline of this Church allows" he shall refer the case to the Bishop who shall give his judgment in writing. Or, the persons themselves may apply to the Bishop "for the recognition of communicant status or for the right to apply for Baptism or Confirmation". But in no case shall the Sacraments be refused to a penitent person in danger of death. (VII)